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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,271	04/25/2001	Melvyn C Bale	36-1441	7755

23117 7590 04/06/2007

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EXAMINER
PATEL, ASHOKKUMAR B

ART UNIT	PAPER NUMBER
2154	

MAIL DATE	DELIVERY MODE
04/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/830,271	Applicant(s) BALE ET AL.	
	Examiner Ashok B. Patel	Art Unit 2154	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet..

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

NATHAN FLYNN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Continuation Sheet:

1. The request for reconsideration has been considered and entered for the purpose of Appeal, the final rejection of claims 18-38 is maintained.

Response to Arguments

2. Applicant's arguments filed 03/08/2007 have been fully considered but they are not persuasive for the following reasons:

Applicant's arguments:

"In continuing to reject all claims over the previously cited art, the Examiner has missed the point of Applicant's previously submitted arguments. More particularly, Applicant's inventions are directed to a messaging platform, i.e., for storing email or voice mail (see, inter alia, the present Title Of The Invention, Abstract and specification at page 1, lines 1-11), while the cited Obhan reference is clearly not directed to a messagin.q platform but instead is directed to methods for managin.q subscriber load of a wireless communication system, i.e., the loading of real time callers accessing the spectrum of the wireless communication system (see, inter alia, Obhan at the Title Of The Invention, Abstract, Technical Field at column 1, lines 14-20, and Summary Of The Invention at column 2, lines 36-46)."

"The Examiner takes umbrage simply because Applicant correctly points out that Obhan is not directed to an improved messaging platform and hence does not teach or suggest the claimed structure or method of operation of Applicant's improved messaging platform."

"It is hard to fathom how Obhan can be directed to an improved messaging platform yet not include a single claim that even mentions a messaging platform."

"However, nowhere in the above cited portion of Obhan are the terms "messaging platform" to be found. It appears that the Examiner has erroneously assumed that the "loading of subscribers" is equivalent to the "loading of a messaging platform," as that term is used in the present application."

Examiner's response:

A. Applicant's arguments include relating the claimed limitations to specification descriptions, however, it is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. Accordingly Examiner maintains these rejections.

B. Examiner is not taking umbrage as stated above, rather, Examiner would like to fathom the teachings of Obhan relevant to the claimed invention, by presenting the following facts:

a. First of all, Obhan teaches clear distinction between "the subscriber" and "the system operator" at col. 5, line 24-26, "The system operator parameters 104 include subscriber profiles 110 for a plurality of subscribers operating within the wireless communication system.", and at col. 6, line 5-22, "Potential demand data 120 is based upon the number of subscribers registered within the wireless communication system but presently not engaged in ongoing communications. The current demand data 118 and the potential demand data 120 may include information pertinent to particular

subscribers of the wireless communication system. Such subscriber information may include the subscriber's location, the subscriber's class, the subscriber's current status and call detail records for the subscriber that show average call hold time and subscriber mobility during the call, among other characteristics. In its implementation, the SYM analytical engine 102 is parameter driven. System operators define the parameters that control the computations of the analytical engine. The system operator input will be based upon the goals that the system operator has for the operation of the system. These goals, if met, will maximize revenue for the system operator."

Thus, Obhan's "system operator" is " a service provider" of the claimed invention, the subscribers are the reasons for "Potential demand" and "current demand" on the system operator.

Now, Obhan teaches at col.18, line 41-62, col. 19, line 21, "FIG. 12 is a logic diagram illustrating operation according to the present invention in selectively completing a call to a subscriber unit. Operation commences at step 1202 where the MSC performs normal operations until a call is received for a subscriber unit at step 1204. From step 1204, operation proceeds to step 1206 wherein the MSC sends a locate request to the VLR for the subscriber unit. The VLR responds at step 1208, identifying the corridor in which the subscriber was last located. Based upon the identity of the corridor, the MSC queries the ACB for the corridor in which the subscriber appears to be located at step 1210. The ACB returns the corridor availability information to the MSC at step 1212, indicating the class supported by the corridor.

At step 1214, it is determined whether the corridor supports delivery of the call. For example, if the corridor is loaded, it may support delivery of only premium subscriber calls. If the corridor does support delivery for the class of the destination subscriber, the call is completed and serviced at step 1216. However, if the corridor does not support delivery to the subscriber, completion is denied and/or a voice message is taken at step 1218. From both steps 1216 and 1218, operation returns to step 1202."

Please note that Obhan teaches to selectively complete a call to a subscriber unit, and "if the corridor does not support delivery to the subscriber, completion is denied and/or **a voice message is taken** at step 1218." Thus, Obhan also teaches **"a message store arranged to receive message data and to store said message data for subsequent retrieval."**

Also, thus, Obhan teaches "loading of the messaging platform" and not "the loading of subscribers."

b. Now , Obhan further teaches the calls originating from a subscriber unit at col.18, line 63- col. 19, line 21, "For calls originating from a subscriber unit, at least two differing scenarios may be employed. Where the subscriber unit has knowledge of whether it has access to the system, it will apprise the user of such potential limitations or prevent access. In the case of a low priority **voice user,** or a low priority data user (e.g., a vending machine), the origination of calls will be controlled by the subscriber unit to preclude call initiation when the subscriber unit does not have access. Where the subscriber unit does not know whether it has access to the system, the network

infrastructure may simply block its attempted call if the subscriber unit does not have access to the system (as may be determined upon access of an ACB). Thus, in either case, the subscriber unit will not be able to originate a call if it does not have access to the system. In a variation of this scheme, the user may override his or her access limitations in certain situations. For example, if a low priority voice user of a particular subscriber class does not have access at the present time due to current subscriber loading, he or she may select to pay an additional fee to access the system. In another example, a user may have a particular number of high demand minutes included in his or her plan which may be used in such a situation. In still another example, a data user, such as an electronic billboard may override accessibility limitations to perform updates, with such access incurring an additional charge."

Since Obhan allows to deliver the calls or voice messages and allows the call initiation, Obhan incorporates the messaging platform.

Also, as identified previously and as above, ACB is a **"control interface a arranged to allow the communication of control signals between the messaging platform and a service providers**, since it allows to deliver the calls or **voice messages and initiates the call.**

c. Obhan teaches at col.3, line 35-40, "In dividing the subscribers into classes, differing types of access may be provided over time. For example, voice users will have access to the system on an as-needed basis, subject to class restraints that may limit the access of certain classes of voice users during heavy loading periods." This teaches that subscriber (end user) is the service provider.

Obhan teaches at col.10, line 7-20, "The wireless communication system illustrated is designed so that communication trunks connect the base stations 308, 310, 312 and 314 to the BSCs 304 and 306 have ample capacity to carry a maximum base station loading. Thus when wireless networks become loaded and calls are blocked, the source of congestion is generally the air interface between the base station and the subscriber unit. This source of the congestion may be either the control channels used for signaling or may be traffic channels. The SYM server 324 tracks usage of the channels to identify bottlenecks within the wireless communication system. To make effective use of current demand information, it is important that the information be available in real-time to the SYM server 324." The details of SYM server 324 is described at col. 4, line 65-col. 5, line 36.

This where Obhan teaches an **"an overload controller provided and responsive to an overload condition of the platform and arranged, in response to the said overload condition, to limit loading of the platform by signals arriving."**

Thus, as shown in Fig. 3, elements 330 and 324, the overload controller (324) is provided on the control interface (330).